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Supreme Court of the United States

October Term, 1968.

No. 933

CLAUDE L. KOHLER, DAVID L. BURNES and RENE S. WOGAN, individually and as citizens, taxpayers and voters of the State of Louisiana, for themselves and all other persons similarly situated and the PENNISTON-GENERAL TAYLOR ASSOCIATION and the UPTOWN CIVIC ASSOCIATION,

versus

A. P. TUGWELL, individually and as Treasurer of the State of Louisiana, NEVILLE LEVY, individually and as Chairman of the Mississippi River Bridge Authority and/or the Greater New Orleans Mississippi Bridge Authority and ARSENE L. STEWART, individually and as Director of the Department of Highways for the State of Louisiana and JOHN J. McKEITHEN, individually and as Governor of the State of Louisiana, and their successors in office.

Appeal from the United States District Court for the Eastern District of Louisiana sitting as a three-judge court, case No. 68-253.

MOTION TO AFFIRM.

DOROTHY WOLBRETTE and
WILLIAM P. CURRY,
Assistant Louisiana Attorneys General,
Room 104 Supreme Court Building,
New Orleans, Louisiana,
DUKE & PORTERIE,
JESSIE S. GUILLOT.

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MOTION TO AFFIRM.

Pursuant to Rule 16 (1) (c) of the rules of this Court, the defendants herein move that the judgment of the District Court be affirmed.

STATEMENT.

This is an appeal from the judgment of a Three-Judge District Court dismissing a class action brought by plaintiffs seeking an injunction prohibiting any action under the authority of a Louisiana State constitutional amendment adopted in 1966 on the ground that the wording of the ballot misled the voters. The amendment, Act 555 of the 1966 Louisiana Legislature, to Article VI, Section 22 (g) (4) of the Louisiana Constitution, was submitted to the people for vote after publication of its entire text in a newspaper in each Parish of the State as provided by Article XXI, Section 1 of the Louisiana Constitution, which method of submission to the voters of Louisiana has been specifically and judicially approved by the Court in *Hotard v. City of New Orleans,* 213 La. 843, 35 So.2d 752, appealed dismissed 335 U. S. 803. Article XXI of the Louisiana Constitution has not been changed since *Hotard* insofar as notice of publication is concerned.

The ballot, a summary of the amendment, read as follows:

> "For or Against:"
>
> "The proposed amendment to Article VI, Section 22 (a) (4) of the Louisiana Constitution to amend so as to provide for a dedication of funds to the police jury of the parish of Tangipahoa and a dedication of funds to the St. Charles-St. John the Baptist Bridge and Ferry Authority and

so as to provide for funds for additional river crossings across the Mississippi River at or near New Orleans for so long a time as any bonds, whatsoever are outstanding in connection with any such bridge and reimposing reasonable tolls on all bridges and facilities of the Greater New Orleans Mississippi River Bridge Authority."

Appellants' suit alleged that the language at the end of each portion of the ballot with respect to reimposing tolls misled because what appeared on the ballot indicated that the bridge tolls would be reimposed *immediately* upon passage of the amendment, whereas the amendment itself did not provide for this and in actual fact the tolls have not yet been put back on the bridge. Appellants claimed that they were thus misinformed by the ballot in violation of the due process requirements of the Federal Constitution, the "Guarantee" clause of the United States Constitution, and appellants' constitutionally protected right to vote.

The Three-Judge Court was unanimous in holding that none of the appellants' constitutionally protected rights were violated in connection with the passage of the amendment. Two of the Judges collaborated in a concurring opinion on a side issue as to whether alleged violations of the "Guarantee" clause, Article IV, Section 6 of the United States Constitution are justiciable, but all three Judges were unanimous in holding on the merits that the process by which the amendment was adopted did

not violate the appellants' rights under the "Guarantee" clause or any other section of the United States Constitution.

The main opinion of the Three-Judge Court of Judge Rubin, exclusive of the background details and passing remarks as to the inartistic wording of the amendment was as follows (J.S.—Appendix A, pages 29-30):

> "The issue before us is not a proposition for grammarians. If the average voter had to decide what he was voting on from the ballot alone, he might well have read it as the plaintiffs do. But he did not have to decide from this summary. He could look at the amendment itself.
>
> The ballot, as will appear from Appendix A, was long. No one who has voted in any election at which voting machines are used can fail to know that Louisiana's voters, once they stand before a voting machine in a voting booth, are not likely to be able to study the description of each proposition on the ballot. They must come to the polls prepared in advance to vote on the amendments if they are to vote with any semblance of understanding.
>
> The requirements of both the Louisiana Constitution and the Federal Constitution were interpreted by the Louisiana Supreme Court in

Hotard v. City of New Orleans[12] to mean: 'All that is required to be printed on the ballot is sufficient information to identify the proposed amendment which the voter is voting for or against.'[13] 'Undeniably,' as the United States Supreme Court said, in *Reynolds v. Sims,*[14] 'the Constitution of the United States protects the right of all qualified citizens to vote, in state as well as in federal elections.' However, a federal court must not interfere with the internal affairs of a State unless it is necessary to do so to protect those rights guaranteed every citizen by the Federal Constitution.[15] The procedure followed by Louisiana does not deprive the plaintiffs of Due Process for it is sufficient that Louisiana's voters were informed by the ballot of the subject of the amendment, were given a fair opportunity by publication to consider its full text, and were not deceived by the ballot's words.

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[12] 213 La. 843, 35 So.2d 752, 756 (1948).

[13] An appeal from *Hotard* was dismissed by the Supreme Court for want of a substantial federal question. 335 U. S. 803 (1948).

[14] 377 U. S. 533, 554 (1964).

[15] Ohio Oil Co. v. Conway, 281 U. S. 146 (1930); NAACP v. Thompson, 357 F.2d 831 (5 Cir., 1966)."

In order for the Court to appreciate fully the terms of the Amendment, we will give a brief out-

line of the background of this Constitutional proposition.

The history of this matter is that in the 1952 Legislature there were three pertinent legislative enactments, relative to bridge and ferry authorities. There was Act No. 7 of 1952 and Act No. 8 of 1952. Likewise, at the same session of the Legislature there was enacted Act No. 90 of 1952, which became, when adopted by the people, the amendment to Sub-Section (g) of Section 22 of Article VI of the Constitution of Louisiana as it existed before its amendment by Act 745 of 1954, and more recently by Act 555 of 1966, the proposed joint resolution which forms the basis of the instant law suit. Act 7 of 1952, has gone through a series of minor amendments, the first of which was Act 526 of 1958, which then became LSA-R.S. 41:1091—through 1106 as further amended by Act 413 of 1966.

Pursuant to the initial grant of powers in Act No. 7 of 1952, The Mississippi River Bridge Authority was formed by the Notarial Act of Bartholomew P. Sullivan, Jr., Notary Public for the Parish of Orleans, recorded in Mortgage Book, Orleans Parish, Book 1838, folio 359 on June 30, 1952, and duly filed with Wade O. Martin, Jr., Secretary of State, on July 2, 1952. (Subsequently, the Charter to the original Authority, comprised of members appointed by the Governor, the Council of Jefferson Parish, and the Council of New Orleans, was amended on July 29, 1965, before Claude W. Duke, Notary

Public, to increase the membership of the Authority by two additional members to come from the Parish of St. Bernard.)

After the formation of The Mississippi River Bridge Authority, an indenture and deed of trust dated November 1, 1954, was entered into, pursuant to which $65,000,000.00 of municipal-type revenue bonds were issued for the construction of the presently outstanding Greater Mississippi River Bridge (copy of which is attached to affidavit of Neville Levy, Chairman of The Mississippi River Bridge Authority, which is part of the record of this case). These bonds are secured primarily by the toll revenues of the present Mississippi River Bridge, and secondarily by the funds from Highway Fund No. 2 as provided in Section 22 (g) of Article VI of the Louisiana Constitution (Act 90 of 1952, as subsequently amended).

This bond indenture is still outstanding with approximately $47,000,000.00 of the bonds being outstanding and unpaid.

The method by which the bridge was made a toll-free facility when Governor John McKeithen became Governor is as follows:

Under authority of the case of *Smith vs. Ascension-St. James Bridge and Ferry Authority,* 241 La. 806, 131 So. 2d 902, the Louisiana Department of Highways entered into a contract with The Mississippi River

Bridge Authority whereby the revenues required to service the presently outstanding bond issue of the Bridge Authority are derived from the long-range Highway fund (copy of this agreement annexed to Neville Levy affidavit is part of the record of this case).

In the agreement between the Highway Department and The Mississippi River Bridge Authority the Highway Department furnishes necessary revenues which together with the proceeds of Highway Fund No. 2, the license plate money pledged by Article 6, Section 22 (g), as are needed as is required to meet the maintenance and operating budget of The Mississippi River Bridge Authority and its Debt Service Fund requirements plus a factor in excess thereof as stipulated by the Bond Indenture.

On December 6, 1962, the Attorney General of the State of Louisiana issued an opinion to the effect that under Article VI, Section 22 (g) (4) as originally enacted, when presently outstanding bonds issued in connection with the construction of the present Mississippi River Bridge are liquidated or paid, the dedication of the 50 per cent surplus in Highway Fund No. 2 will cease and the 50 per cent surplus will then be transferred to the General Highway Fund.

Therefore, when the traffic on the present bridge reached the great level it has enjoyed for the last few years a level equivalent to the projected crossings anticipated at the time of its building for the

year 1984, The Mississippi River Bridge Authority sought the enactment of Act 555 of 1966, in order to provide that they could have as additional security for proposed revenue bonds to finance additional bridges across The Mississippi River, a continuation of 50 per cent of the surplus in Highway Fund No. 2 beyond the time when the presently outstanding bonds of the Authority are liquidated, or refunded.

ARGUMENT.

Appellants' contentions were thoroughly considered by the Three-Judge District Court and the Judges unanimously agreed that the constitutional rights of the plaintiffs had not been violated. The decision is correct and should be affirmed.

The District Court reviewed the constitutional amendment itself, the ballot as reprinted above and after extensive hearing and submission of written memorandums, held that the constitutional rights of the plaintiffs had not been violated. The Court found that the ballot was not misleading and that it adequately identified and summarized the proposed amendment.

1. The text of the amendment itself is reprinted herein so that the Court may see that the language is sufficient to convey the meaning of its provisions. Emphasis is supplied only to highlight the pertinent passages:

"Proposing an amendment to Article VI, Section 22 (g) (4) of the Constitution of Louisiana, relative to the General Highway Fund and Mississippi River crossings, expressways, and drainage; and the dedication of such funds so as to provide for a dedication of $100,000.00 per year to the police jury of the parish of Tangipahoa and for a dedication of $150,000.00 per year to the St. Charles-St. John the Baptist Bridge and Ferry Authority and so as to: extend the dedication of that portion payable to authorities created under authority of Act No. 7 adopted at the regular session of the Legislature for the year 1952 and amendments and supplementary laws thereto in connection with the construction or acquisition of a toll bridge and any ferries to be operated as part of the system of river crossings across the Mississippi River at or near New Orleans and so as to extend the period during which fifty per cent (50%) of the surplus monies remaining in State Highway Fund No. 2 shall be payable to the aforesaid bridge and ferry authorities for as long as the authorities have any bonds whatsoever outstanding in connection with any bridge, bridges or other facilities within its jurisdiction, subject to requirements herein provided.

Section 1. Be it resolved by the Legislature of Louisiana, two-thirds of the members elected to each house concurring, that there shall be sub-

mitted to the electors of the State of Louisiana for their approval or rejection, in the manner provided by law, a proposal to amend Article VI, Section 22 (g) (4) so that it shall read as follows:

Section 22 (g) (4)—*Commencing on June 30, 1967 and on June 30th of each year thereafter, fifty per cent (50%) of the surplus monies remaining in State Highway Fund No. 2, after all payments hereinabove required shall have been made, shall be paid by the State Treasurer* (a) Subject to the rights of the holders of any bonds presently outstanding issued pursuant to subparagraph 4 of Article VI, Section 22 (g) of this Constitution, but not including the refunding of any such bonds, there shall *first be paid to the police jury of the parish of Tangipahoa,* commencing on June 30, 1967 (or as soon thereafter as payment can be made without impairing any existing contractual obligations), and on June 30th of each year thereafter, *the sum of One Hundred Thousand Dollars ($100,000.00),* which monies shall be used by said police jury for parish purposes at the discretion of the police jury, and *secondly,* there shall be paid *to the St. Charles-St. John the Baptist Bridge and Ferry Authority,* commencing on June 30, 1967, (or as soon thereafter as payment can be made without impairing any existing contractual obligations), and *on June 30th of each year thereafter, the sum of One Hundred Fifty Thousand Dollars ($150,000.00),* which monies shall be used by such bridge and ferry authority exclusively for the

purpose of defraying costs of detailed engineering plans and specifications, the obtaining, gathering and compiling of all data necessary thereto, payment of the initial cost of acquisition, by purchase or by construction, of bridges or ferries, or to operate, maintain and improve the same, or as security for the payment of the principal of and interest on bonds, and the amounts necessary to make payments into sinking funds, reserve funds and other funds required to be established and maintained by said bridge and ferry authority to comply with any contract made with the holders of its bonds, including refunding bonds, to be issued by said bridge and ferry authority, as said authority may determine; provided that the foregoing $100,000.00 annual payment to the governing authority of the parish of Tangipahoa and the foregoing $150,000.00 annual payment to the St. Charles-St. John the Baptist Bridge and Ferry Authority shall in no event become due and payable unless and until presently outstanding bonds of the Mississippi River Bridge Authority are paid or refunded in full in principal and interest in order for the building of an additional Bridge or Bridges within the Jurisdiction of the Mississippi River Bridge Authority for which financing the imposition or re-imposition of tolls is required. So long as any revenue bonds whatsoever, including refunding bonds, issued by the St. Charles-St. John the Baptist Bridge and Ferry Authority are outstanding the provisions of this Sub-section 22 (g)

(4) (a), Article VI of this Constitution shall be irrevocable and shall be and constitute a valid and binding contract between the holders of any such bonds, the St. Charles-St. John the Baptist Bridge and Ferry Authority, *and then annually to the bridge and ferry authority created under authority of Act 7 adopted at the regular session of the Legislature for the year 1952 and amendments and supplementary* laws thereto in *connection with the construction or acquisition of* toll bridges and *any ferries intended to be operated as part of the system of river crossings across the Mississippi River at or near New Orleans under the authority of such legislation,* and *shall be used exclusively by such bridge and ferry authority to supplement the revenues thereof,* for the *purpose of paying the principal* of and interest on bonds issued by such bridge and ferry authority and the amounts necessary to make payments into sinking funds, reserve funds, and other funds required to be established and maintained by said bridge and ferry authority to comply with any contract made with the holders of its bonds. *The revenues dedicated to State Highway Fund No. 2 and payable to Mississippi River Bridge Authority* by this paragraph (4) (b) shall *continue to be dedicated and applied* as directed as long as any bonds of such authority whatsoever including refunding bonds are outstanding in connection with any bridges including the present bridge and any future bridge or other facilities within its jurisdiction, and after said

bonds have been fully paid in principal and interest further payments to said bridge and ferry authority *shall cease and the said fifty per cent (50%) of* the surplus *monies remaining in State Highway Fund No. 2 shall be transferred to the General Highway Fund.*

Any toll bridges constructed or acquired or to be constructed or acquired by such bridge and ferry authority, and any ferry or ferries acquired or to be acquired by such authority and intended to be operated as a part of such river crossings, are hereby declared to be a part of the State Highway System, and the State Department of Highways or its successor is authorized to enter into contracts with such authority for the operation and maintenance of such bridges and ferry or ferries and to construct approaches and connecting highways to connect such river crossings with the State Highway System.

On or after the 1st day of January, 1955, the Legislature shall not alter the method of appointment of members of the board of any bridge or ferry authorities organized under the provisions of Act 7 of 1952 which are already in existence on that date without the consent and approval of the governing bodies of the parishes which have participated in the organization of such bridge or ferry authorities.

Section 2. This amendment shall be predicated upon receiving a combined majority of the

votes cast upon the question of its adoption in the parishes of Orleans, Jefferson, St. John the Baptist, St. Charles, Tangipahoa, and St. Tammany, in addition to receiving a majority vote state wide.

Section 3. Nothing herein contained shall affect in any manner the monies in Highway Fund No. 2 allocated and dedicated to the Parishes of Jefferson and St. Tammany under the provisions of Article VI, Section 22 (g) (5) of this Constitution.

Section 4. This proposed amendment shall be submitted to the electors of the State of Louisiana at the next election for Representatives in Congress to be held in Louisiana on the first Tuesday next following the first Monday of November, 1966.

Section 5. On the official ballot to be used at said election there shall be printed:

FOR the proposed amendment to Article VI, Section 22 (g) (4) of the Louisiana Constitution to amend so as to provide for a dedication of funds to the police jury of the parish of Tangipahoa; and a dedication of funds to the St. Charles-St. John the Baptist Bridge and Ferry Authority and so as to provide for funds for additional river crossings across the Mississippi River at or near New Orleans for so

long a time as any bonds whatsoever are outstanding in connection with any such bridge and reimposing reasonable tolls on all bridges and facilities of the Greater New Orleans Mississippi River Bridge Authority.

and also:

AGAINST the proposed amendment to Article VI, Section 22 (g) (4) of the Louisiana Constitution to amend so as to provide for a dedication of funds to the police jury of the parish of Tangipahoa and a dedication of funds to the St. Charles-St. John the Baptist Bridge and Ferry Authority and so as to provide for funds for additional river crossings across the Mississippi River at or near New Orleans for so long a time as any bonds whatsoever are outstanding in connection with any such bridge and reimposing reasonable tolls on all bridges and facilities of the Greater New Orleans Mississippi River Bridge Authority." (Emphasis supplied.)

The opportunity was available to the voters to study the entire text of this amendment as officially published in the newspapers of all parishes in the State prior to election. As is evident from the reprint of the amendment herein, and as the Court below necessarily found to reach the Court's unanimous conclusion and decision, the meaning and intent of the amendment is clear from its language.

2. The ballot clarified and correctly summarized the necessarily complex amendment, including with respect to when tolls would be reimposed. The amendment contemplated the reimposing of tolls in connection with the financing of new bridges, with no specific time for such reimposition indicated, but only at such time as the use of the amendment became necessary to continue obtaining Highway Fund No. 2 money for financing new bridges:

Act 555, the joint resolution proposing an amendment to Article 4, Section 22 (g) (4) did not repeal either expressly or impliedly the previously existing Article 6, Section 22 (g) (4).

It will be noted from the certified copy of such bill from Wade O. Martin, Jr., forming a part of the record, that the title to the bill does not state a repeal of the same or to reenact the same, but merely to *amend* the same. The customary section used when a repeal rather than an amendment is intended, which reads: "All laws or parts of law in conflict herewith be and the same are hereby repealed" is conspicuously ABSENT in Act 555.

Under Louisiana jurisprudence, a statute is not repealed in absence of clear legislative intent to do so. *State vs. Jones,* 220 La. 381, 56 So. 2d. 724; *State vs. Randall,* 219 La. 578, 53 So. 2d 689; *Mouledoux vs. Maestri,* 197 La. 525, 2 So. 2d 11; *James vs. Orange Savings and Loan Association,* 195 So. 2d 183. Certainly there was no intent to repeal in the case of Act

555 of 1966, and the preliminary language states only "to amend". *Guillotte vs. City of New Orleans*, 12 La. Ann. 432 (While the *Guillotte* case was governed by the Louisiana Constitution of 1852, the specific provisions of that Constitution, Articles 115 and 116, referred to by the Court, are contained in the present Louisiana Constitution of 1921, in Article 111, Sections 16 and 17 thereof; so that the holding of the *Guillotte* case is still valid and "good law.")

Significantly, Act 555, contains language which clearly indicates that it was the Legislative intent to protect the rights of the holders of presently outstanding bonds issued pursuant to Article 6, Section 22 (g) (4), of the Louisiana Constitution as originally existing prior to 1966. This was essential in the drafting of the legislation because of the fact that the rights of such bond holders were secured by the provisions of the Federal Constitution, namely Article I, Section 10 thereof, prohibiting states from passing laws impairing the obligations of contracts, and Amendment XIV thereof to the effect that no State shall make or enforce any law which shall deprive any person of property without due process of law. Therefore, any amendment to this section of the Louisiana Constitution had to take into account the fact that there was a prior existing section of the Louisiana Constitution, namely, Article 6, Section 22 (g) (4) as originally enacted, pledging the surplus of 50 per cent of Highway Fund No. 2 to the presently outstanding bonds of The Mississippi River Bridge

Authority in the amount of $47,000,000.00, and a bond indenture contract vesting rights in the bond holders.

Bear in mind that Section 22 (g) (4) as originally enacted provided that from such 50 per cent surplus there was first to be deducted, pursuant to Section 1 of sub-section D, the sum of $50,000.00 for the governing authority of the Parish of St. Charles and a like sum of $50,000.00 for the governing authority of the Parish of St. John. Under the present supplement, if you will, to Article 6, Section 22 (g) (4), Act 555 of 1966, it is to be noted that payments in the amount of $100,000.00 per year for the Parish of Tangipahoa have been added and the amounts payable to the Parishes of St. Charles and St. John the Baptist have been increased to $150,000.00, payable annually to the St. Charles-St. John the Baptist Bridge and Ferry Authority. This is an additional burden on the 50 per cent surplus of Highway Fund No. 2, above that which existed at the time that the Indenture was entered into under which $47,000,000.00 of bonds of The Mississippi River Bridge Authority are still outstanding.

That is why the provisions of Act 555 of 1966, are so clear that all of the rights of any bond holders that existed before its enactment are to be preserved under the Louisiana Constitution provision, Article 6, Section 22 (g) (4) as it existed prior to the enactment of Act 555 of 1966.

We cite the Court particularly to the language on Page 2:

> ". . .provided that the foregoing $100,000.00 annual payment to the governing authority of the parish of Tangiphahoa and the foregoing $150,-000.00 annual payment to the St. Charles-St. John the Baptist Bridge and Ferry Authority shall in no event become due and payable unless and until presently outstanding bonds of The Mississippi River Bridge Authority are paid or refunded in full and in principal and interest in order *for the building of an additional Bridge or Bridges within the Jurisdiction of The Mississippi River Bridge Authority for which financing the imposition or reimposition of tolls is required*". (Emphasis ours.)

The emphasis of those words and the understanding of the background for this matter and a reading of the Act as a whole makes it clear that the wording that appeared on the ballot at the time of the submission of this matter to the voters in the November election of 1962, in fact informed the voters of just what they were voting for, as opposed to mis-informing them. What the wording did was let the users of the bridge know that if they voted for this constitutional amendment so as to provide for the financing of additional bridges by the extension of the availability of the 50 per cent surplus of Highway Fund No. 2 to the Bridge Authority for the bonding of such additional bridges, that in so doing it was contemplated that such new

bridges would require financing, "for which financing the imposition or reimposition of tolls is required".

Thus, the money that the Bridge Authority is now obtaining to supplement the revenues from the Louisiana Highway Department in lieu of tolls in order to meet their bonded indebtedness as incurred in the 1954 indenture and deed of trust is not under Act 555 of 1966, but is being received under the original provisions of Article 6, Section 22 (g) (4). It is only when we either pay our presently outstanding bond issue in full, or refund the same by a supplemental issue whereby the original terms of Article 6, Section 22 (g) (4) as enacted in Act 90 of 1952, would have expired by their own terms by the extinguishment of the original bond issue, that the provisions of Act 555 of 1966, will be used by the Authority to draw money from Highway Fund No. 2 as a supplement to its toll revenues. The terms of Act 555 of 1966, will at that time require an imposing of tolls on the present existing facility as well as the new facilities to be constructed, as stated on the ballot when submitted to the people.

The voting public was specifically informed of this in a straight-forward fashion by what appeared on the ballot.

For the appellants' arguments to have merit, they must insert the word "immediate" into the ballot. Thus confusion between the ballot and the amendment arises only when that word "immediate" is added so as to imply that the tolls were to be reinstated immediately

after the passage of the amendment. It is obvious on the face of the ballot that no reference is made therein to immediate imposition of tolls.

The test of whether the ballot is or is not misleading must necessarily be the interpretation that a reasonable person would give to the language. In any election there are individuals who for one reason or another will misunderstand what they are voting on, but certainly the most that can be expected in drafting a ballot is that the language will be such as not to mislead the average reasonable person. Otherwise the question of whether this ballot was misleading would have to be decided by a public opinion poll.

3. This constitutional amendment was submitted to the people of Louisiana in conformity with Article XXI, Section 1 of the Louisiana Constitution which requires that the resolution be published in one newspaper in each Parish of the State, twice during the period not less than 30 nor more than 60 days prior to the date of the general election, which in this case was November 8, 1966. The Louisiana Supreme Court in *Hotard vs. City of New Orleans,* 213 La. 843, 35 So.2d 752 considered the Louisiana procedure for submitting State constitutional amendments to the people in the light of Louisiana and Federal Constitution requirements and held that the newspaper publication is the official notice to the people and adequately satisfies the requirements of due process. The Court further held that the ballot's function is only to identify the proposed amendment for the voter. An appeal in the *Hotard*

case was dismissed by the United States Supreme Court in a per curiam decision for want of a substantial Federal question. 335 U.S. 803. Thus the highest Courts of both Louisiana and the United States have upheld the constitutionality of this procedure for submitting amendments to the people of Louisiana. As Judge Rubin stated in his opinion in the present case (J.S., Appendix A, page 30):

> "The procedure followed by Louisiana does not deprive the plaintiffs of Due Process for it is sufficient that Louisiana's voters were informed by the ballot of the subject of the amendment, were given a fair opportunity by publication to consider its full text, and were not deceived by the ballot's words."

4. The three-Judges of the District Court were unanimous in their opinion that on the merits the State action with respect to this amendment did not invade the appellants' rights under the "Guarantee" clause, for the same reasons as were given with respect to due process.

5. Likewise, with respect to the right to vote, no one has been deprived of his vote in this instance. The people were given adequate opportunity by publication to study the amendment itself and also had the benefit of a concise summary of that amendment in the ballot, so that they were adequately informed as to what they were voting for. Appellants' confusion with respect to this amendment could result only from adding the word

"immediate" to the ballot language respecting reimposition of tolls, and that word is clearly not in the ballot. Certainly there can be no question in this case of an impairment of the right to vote no matter how broad a meaning is given to that right.

For the foregoing reasons, it is respectfully urged that Rule 16 (1) (e) of the rules of this Court applies and the judgment of the District Court should be affirmed because it is manifest that the questions on which the decision of this cause depends are so unsubstantial as not to need further argument.

Respectfully,

.....
DOROTHY WOLBRETTE and

.....
WILLIAM P. CURRY,
Assistant Attorneys General,
State of Louisiana,
Room 104, Supreme Court
Building,
New Orleans, Louisiana,
Individually and as
Treasurer of the State
of Louisiana; and
John J. McKeithen,
Individually and as
Governor of the State of
Louisiana and their
successors in office,

DUKE & PORTERIE,

By .....

Attorneys for Defendant,
1206 American Bank Bldg.,
New Orleans, Louisiana 70130,
522-5361,

JESSIE S. GUILLOT,
730 National Bank of Commerce Bldg.,
New Orleans, Louisiana 70112,
523-1094,
Attorney for Arsene L. Stewart, Individually and as Director of the Department of Highways for the State of Louisiana.

CERTIFICATE.

PARISH OF ORLEANS
STATE OF LOUISIANA

BEFORE ME, the undersigned authority, personally came and appeared LOUIS B. PORTERIE, who, after being duly sworn, did depose and state that:

He is counsel of record for defendants in this matter and he has served a copy of this Motion on Donald V. Organ, counsel of record for plaintiffs-appellants by depositing a copy of same in the United States mail, first class postage prepaid, addressed to said counsel at his post office address 219 Carondelet Street, New Orleans, Louisiana 70130, all in compliance with Rule 33, paragraphs 1 and 3 (c) of the Rules of the Supreme Court of the United States.

.....
LOUIS B. PORTERIE.

SWORN TO AND SUBSCRIBED

BEFORE ME, NOTARY, THIS
..... DAY OF ....., 1969.

.....
Notary Public.